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IN the SUPREME COURT of the UNITED STATES

FULL SALVATION UNION
(a Michigan Religious Corporation) and
J. F. ANDREWS
Appellants

vs.

PORTAGE TOWNSHIP
(Kalamazoo County, Michigan,
A municipal corporation organized
and existing under and by virtue of the
laws of the State of Michigan.)
Appellee

ON APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

JURISDICTIONAL STATEMENT

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellants file their statement disclosing the basis upon which they contend that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. A. 344 (a).

Under the Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, and under the Act of Congress

of April 26, 1928, chapter 440,45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

Legislation Drawn in Question

The legislation, the constitutionality and validity of which is here drawn in question is the Portage Township zoning ordinance, known as Ordinance No. 1, being the only ordinance in the Township's book of ordinances.

The ordinance was adopted pursuant to the provisions of Act No. 302, Pub. Acts 1937, as amended by Act No. 69, Pub. Acts 1939, Comp. Laws Supp. 1940, section 2651-11 et seq., Stat. Ann. 1942 Cum Supp. sections 5.2962 (1)-5.2962 (12). Under said Act 302 Portage Township could not be zoned because it was not contiguous or adjacent to a city of 40,000 population and was too sparsely settled, the Act requiring 5,000 population before it could be zoned. Act 69 of Public Acts of 1939 reduced the population requirements to 1500. Portage Township had over 1500, in fact about 4,000 population in 1940, and so it could be zoned. Said Act was repealed by Act No. 184, Pub. Acts 1943 Comp. Laws Supp. 1945, section 2651-71 et seq., Stat. Ann. 1946 Cum. Supp. sections 5.2963 (1)–5.2963 (31). By specific provision of section 26 of the repealing act, however, ordinances previously adopted by townships under the Act of 1937 remained in full force and effect.

The ordinance divided the 36 square miles in the Township into 5 use districts and of the 36 sections, 33 are arbitrarily made "B"-Residential. Some 12 of these sections provide for an exception such as "C"–Local Business or "D"—Commercial and Industrial.

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The property of Full Salvation Union, Appellant herein, is located in this "B"–Residential use district.

The provisions of the ordinance most in question are:
Section 4. "B" Residence District.

In the "B" Residence District no building or premises shall be used and no building shall be hereafter erected or altered, unless provided in this ordinance, except for one or more of the following uses:

1. Any use permitted in the "A" Residence District. (These include: private and two family dwellings, churches, Public schools, Libraries and Accessory buildings.)
2. Farming and truck gardening.....
3. Multiple Dwellings
4. Hotels
5. Private clubs, fraternities, lodges.....
6. Boarding houses
7. Hospitals
8. Institutions of an educational, philanthropic or eleemosynary nature.....
9. Nursery and greenhouses
10. Accessory buildings.....
11. Public garages.....
12. Golf courses.....

Section 10. Area Requirements.

The building width of houses and other structures in "A" Residence Districts and "B" Residence Districts shall be as limited by other sections of this ordinance. Every dwelling hereafter erected shall contain not less than 400 square feet of first floor space.

Section 12. Light, Ventilation, Sanitation and Protection Requirements.

1. (omitted.)

2. Every dwelling hereafter erected shall be provided with running water, adequate inside water closet accommodations, and sewage facilities.

3, 4 and 5, (omitted).

6. Every dwelling hereafter erected shall be placed upon a substantial foundation of mortar and stone, brick, concrete or other similar or like materials; all joists shall be not less than one foot off the ground; all exterior walls shall be finished with butt wood siding, wood shingles, asbestos-cement shingles or siding, stucco on metal lath, masonry veneer or other similar standard siding materials. No roll roofing material shall be used for exterior siding purposes; all wood exterior finish shall be painted or similarly protected; all roofs shall be finished with asphalt, asbestos, or wood shingles, or other standard roofing material or materials of a permanent nature and construction; no tar paper or other similar materials shall be used as a permanent exterior roofing; all chimneys shall be of approved masonry or re-enforced concrete and shall extend at least two and one-half feet above the highest point of the roof of the building on which they are constructed and shall be wholly supported on a substantial ground foundation.

7. (omitted.)

Section 13. Tents and Automobile Trailers; other unlawful Uses.

Tents, house trailers and/or automobile trailers shall not be used for dwelling purposes within the township limit, provided, however, that house trailers or automobile trailers may be used for temporary dwelling for a total period of not more than 14 days in any one year by any one family when located upon premises having

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running water and sewage facilities, and provided further that automobile trailers and house trailers may be occupied for dwelling purposes within duly licensed house trailer camps and subject to the requirements thereupon imposed.

The keeping of pigs or hogs is prohibited in properties platted for residential purposes within the use district boundaries.

A complete copy of the above ordinance was put in evidence as Plaintiff's Exhibit E. (Record, 81).

The pertinent provisions of the ordinance are set out in Appendix D hereto.

Also drawn in question is section 8 of Act No. 302 of the Public Acts of Michigan of 1937, as amended by Act No. 69, Public Acts of Michigan 1939, under authority of which the foregoing ordinance was adopted, and providing as follows:

> "Buildings erected, altered, razed or converted, or uses carried on in violation of any provision of township ordinances or regulations made under the authority of this Act are hereby declared to be a nuisance per se. The Court shall order such nuisance abated and the owner and/or agent in charge of such building or land shall be adjudged guilty of maintaining a nuisance per se."

How Legislation Construed by Court Below

The ordinance was construed by the Michigan Supreme Court, upon affirming the decree of injunction by the Circuit Court for the County of Kalamazoo, Michigan, as not authorizing the use of the corporate appellant's, Full Salvation Union's, property, located in Section 23 of Portage Township, for camp meeting purposes, and that inasmuch as such use is not authorized by the ordinance such use is **ipso facto** made a nuisance

per se under authority of Section 8 of Act 302 of Public Acts of Michigan 1937, above cited, and subject to abatement by injunction, **irrespective of the reasonableness of the use in relation to the factual situation.**

The said ordinance and statute were also construed by said Court as authorizing the **enjoining of erection** of buildings and the use of tents suitable and appropriate to such camp meeting use, for dwelling purposes, i.e. in the summer season, because they do not comply with the building requirements of the ordinance even though such requirements reasonably apply only to year round dwellings.

The said ordinance and statute were also construed by said Court as authorizing the summary abatement as a nuisance **per se** of a church building which complies with the building requirements of the ordinance and the uses allowed by said ordinance, merely because the Township Board had arbitrarily refused to issue a formal building permit for its erection.

The said ordinance and statute were also construed by said Court as authorizing the summary abatement as nuisances **per se** of fourteen cottages or cabins suitable and appropriate to the camp meeting use for dwelling purposes, i.e. in the summer season, because they did not comply with certain requirements as to dwellings specified in the ordinance which reasonably apply only to year round dwellings and because the Township Board had arbitrarily refused to issue building permits for their erection.

The Supreme Court of Michigan, the highest court of Michigan in which a decision can be obtained in this cause, held that the ordinance and statute were valid and constitutional and that they did not abridge appellants' rights of freedom to worship and serve Almighty God according to the dictates of conscience and as com-

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manded by Him. Said Supreme Court also held that said ordinance and statute were not unconstitutional because unreasonable and in excess of the police powers of the state and township and contrary to the Fourteenth Amendment of the United States Constitution. The Court also refused to hold that the ordinance conferred arbitrary and discriminatory power on the Township Supervisor and the Township Board contrary to the Fourteenth Amendment to the United States Constitution. The court of last resort of the State of Michigan sustained the application of the ordinance and statute to appellants and decided in favor of the validity of same under the United States Constitution and held that they were constitutional on their face and as construed and applied.

Michigan Supreme Court is Court of Last Resort

Appellants were enjoined by decree of the Circuit Court for the County of Kalamazoo which was affirmed on appeal by the Supreme Court of Michigan which by the Constitution and statutes of Michigan is the highest Court of appeals in the State of Michigan and the Court of last resort in which a decision could be had in this cause.

Timeliness

The opinion and decree of the Supreme Court of the State of Michigan affirming the decree of the Circuit Court for Kalamazoo County, Michigan, was rendered and filed October 13, 1947, as a final decree.

This petition for appeal is duly presented and filed within three months from the date such decree became final and is therefore timely as required by law.

Opinion

The opinion of the Supreme Court of the State of

Michigan, the court of last resort in said state is reported in 29 N. W. (2nd) 297, Oct. 13, 1947, and is attached hereto as Appendix A. The decree of the Circuit Court for Kalamazoo County, Michigan, is attached hereto as Appendix B. The opinion of the Circuit Court for Kalamazoo County, Michigan, is attached hereto as Appendix C.

Statement of Nature of Case, Rulings of Courts and Manner in which Federal Questions Were Raised.

The Appellant, Full Salvation Union, is a religious organization incorporated in the State of Michigan Jan. 31, 1934, for the purpose of carrying on religious, educational and charitable work. It has numerous churches, chapels, tabernacles, and missions throughout Michigan and some in other states. The Appellant, J. F. Andrews, is the General Pastor and principal executive officer of the denomination.

Since its formation an annual camp meeting has been held for a period of approximately two weeks each summer. In connection therewith the denomination also has conducted a Bible School and held its General Council Meeting of the entire membership and the Annual Meeting of its Elders, its general executive body.

The Appellee, Portage Township, is a wholly rural area of thirty-six (36) square miles located a few miles south of the City of Kalamazoo. On February 8, 1942, Portage Township adopted the zoning ordinance, hereinabove described under the heading "Legislation Drawn in Question."

On May 4, 1942, the Appellant denomination purchased a rectangular tract of about 15 acres of land wholly covered by a thick growth of timber for a permanent Camp Meeting, Bible School and Conference

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Grounds; a little less than three months after the Portage Township Zoning Ordinance had been enacted. This tract of land is located 7 miles south of the City of Kalamazoo and about ¼ mile from the northerly end of West Lake in Portage Township.

Immediately after the purchase of the land the appellant denomination applied for and obtained a building permit for a large tabernacle to be used each summer as the central meeting place and a permit for a cottage to be used by the caretaker of the grounds. The appellant denomination notified the Township Supervisor of the intended use of said wooded land and requested that it be exempted from taxes. The exemption was granted.

The tabernacle and caretaker's cottage were completed in the summer of 1942 and the Camp Meeting and Bible School, the General Council Meeting and the Annual Meeting of the Elders were held during a period of about two weeks. A number of cottages or cabins were erected or placed on the grounds by individual members of the Full Salvation Union to be used by them as temporary dwellings during the meetings. Some tents and house trailers were used for the same purpose. During the conference and camp meeting period, the Full Salvation Union provided members with meals and religious literature at cost or below cost as an accommodation to the members.

Similar meetings have been held each summer since 1942, to and including 1947.

Other members placed cottages or cabins on the grounds in 1943, making in all, fourteen cottages or cabins erected without building permits.

In November, 1943, following the meeting in July the Portage Township Board by letter notified Reverend J. F. Andrews, Appellant herein, that the cottages or

cabins erected by the members did not comply with the requirements of the zoning ordinance and that no permits had been issued for them. This letter was the first notice of any difficulty with the zoning ordinance and immediately Reverend J. F. Andrews made efforts to get permits issued for these buildings and when told that they did not comply with the requirements for dwellings, he requested that they be recognized as "accessory buildings" within the meaning and intent of the ordinance. At the same time a request was made for a building permit for a garage for the caretaker's cottage. The action of the Board was to withhold such permit for the garage until the cottages and cabins were made to comply with the ordinance.

At a Board meeting two weeks later, the Board agreed to accept the cottages or cabins as accessory buildings and asked the township attorney to prepare a suitable permit for these buildings p. 304-305 (Record) and granted a permit for the garage p. 87-88 (Record).

In the spring of 1944, a request was made for a building permit for a church building to be used for year round religious services for the community. The action of the Board was to lay the request on the table until the garage was completed. The garage was completed and the church building was partly constructed including modern toilet facilities and large septic tank but the Board then refused to issue the formal permit for the church building, so that it has not been completed since the permit has not been issued.

Reverend J. F. Andrews and other representatives of Full Salvation Union negotiated with Portage Township Board, attended Board meetings, tried to reach some agreement whereby the Appellant, Full Salvation Union, could continue to make use of its camp meeting grounds

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and submitted plans for the operation and development of the grounds.

At a later meeting, the Board refused to treat the cottages or cabins as accessory buildings and refused to rezone the land in question.

The land involved in this case is a tract of approximately fifteen (15) acres of wooded land located in Portage Township about seven (7) miles from the City of Kalamazoo; one-fourth (¼) mile from West Lake; used for hunting and dumping rubbish until Full Salvation Union purchased it. Portage Township is a wholly rural area and contains no populous areas. This land was owned for nineteen (19) years by a realtor who testified that he was unable to sell any portion of it for residential purposes. This land is surrounded on all four sides by large tracts of farm and vacant land and only one house is within two hundred (200) feet of any buildings on the land of Full Salvation Union.

On June 22, 1944, Portage Township instituted suit to enjoin Appellants herein "from erecting, maintaining or using of any tents, cabins and/or other structures for camping and/or temporary dwelling purposes, or suffering or permitting the use of premises controlled by them located in Portage Township, Kalamazoo County, Michigan, for camping and/or temporary dwelling purposes and in any manner whatsoever in violation of the terms and provisions of the Portage Township Zoning Ordinance" and further praying that the Court "determine that all buildings, structures and tents placed on said premises in violation of the terms of the Portage Township Zoning Ordinance and without permits therefor, be declared to be nuisances per se and that said defendants (Appellants herein), and/or their agents in charge, be ordered to forthwith abate said nuisances."

After the trial of the case, the Circuit Court for Kalamazoo County, Michigan, issued an injunction decree which is attached hereto as Appendix B and gave an opinion which is attached hereto as Appendix C.

The Circuit Court enjoined Appellants from using the tract of land as a Camp Meeting ground on the basis of a nuisance in fact although the Bill of Complaint did not pray for an injunction on any such ground and there is no evidence in the record to support a finding of nuisance in fact. This trial court also enjoined the erecting of tents, cabins or cottages or other temporary structures not in compliance with the ordinance as nuisances per se, and ordered those already erected to be abated in 30 days, irrespective of the factual situation and without citing any authority for the order in its opinion.

On appeal the Supreme Court of Michigan affirmed the injunctive decree on Oct. 13, 1947, in an opinion hereto attached as Appendix A.

While the individuals who erected or placed the 14 cabins or cottages on the Camp Meeting grounds without permits have removed them subsequent to the decree of the Michigan Supreme Court on Octobr 13, 1947, yet the validity of the injunction decree is still in issue inasmuch as (1) it forbids absolutely a Camp Meeting use of the property of Full Salvation Union, Appellant herein, (2) it restrains Appellants "from erecting, maintaining or using or suffering or permitting the use thereof of any tents, cabins or other structures for camping and/or temporary dwelling purposes, or in any other manner whatsoever in violation of the terms and provisions of the Portage Township Zoning Ordinance", and (3) it declares the church building partially erected on the premises under informal permission, a nuisance

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per se and subject to abatement since the Portage Township Board subsequently refused to issue a formal permit; therefore the injunction deprives said Appellants of freedom of religious worship and deprives Full Salvation Union of its property and denies Appellants equal protection of the laws, contrary to Amendments I and XIV of the U. S. Constitution.

The Supreme Court of Michigan tacitly admits that there are no facts in the record on which to base the injunction on ground of a nuisance in fact, because that Court in its opinion (Appendix A) after noting that the injunction was granted on the ground of nuisance wholly **ignores and abandons that theory of the case** and proceeds to develop a different theory of the case to support the injunctive decree.

The Michigan Supreme Court's Theory of the Case

The theory of the Michigan Supreme Court as to validity of the injunction decree is based on three primary propositions insofar as material to this appeal;

FIRST: That the ordinance does not authorize the camp meeting use.

That the ordinance does not authorize the use.

Whether this is the proper construction of the ordinance is not open to discussion in the U. S. Supreme Court (although it was controverted in the state courts) since the meaning attributed by the highest court of a state to a statute of the state must be accepted by the U. S. Supreme Court, on review, as though it had been specifically expressed in the statute. Supreme Lodge Etc. v. Meyer 265 U. S. 30 (1924). An ordinance is a statute within the meaning of section 273 (a) of the

Judicial Code and 28 U. S. C. A. 344 (a), John P. King Mfg. Co. v. City Council of Augusta 277 U. S. 267 (1928). Jamison v. State of Texas 318 U. S. 413 (1943).

Though the Michigan Supreme Court generalizes the single incident alleged by one witness for the Township, who admitted she had never been on the Camp ground herself (Record, p. 108, 117), that "noise continued from early in the morning until approximately 4:00 A. M. the following day," which was disproved by two witnesses for Appellants who were on the grounds constantly and in general charge of the religious services (Record, p. 115, 309), yet the incident is not cited by the court as evidence of a nuisance in fact but to the effect that: "It cannot be said that such use was within the contemplation of the ordinance" and as evidence to bolster the Court's statement earlier in its opinion that: "It is obvious also that the Camp Meeting itself was an unauthorized use of the premises on which it was conducted."

But an ordinance cannot exclude a lawful use merely because it does not authorize it. The proposition is fallacious in that it assumes that the ordinance covers the whole field of possible lawful uses and that unless a particular use is expressly authorized it is **ipso facto** forbidden. This is not the law.

Whether a Camp Meeting use is a lawful use of property under the 14th Amendment of the U. S. Constitution depends upon whether the use is a reasonable one under the facts and circumstances of the case. Nectow v. City of Cambridge 277 U. S. 183 reversing 260 Mass. 441 (1928). Seattle Trust Co. v. Roberge 278 U. S. 116 (1928).

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SECOND: The Ordinance is Valid.

The Supreme Court of Michigan asserts the ordinance is valid because (a) the presumption is that it is valid and (b) that it is reasonable because it is not "unrelated to the public health and welfare. The requirements as to water, light and sanitation, above noted [presumably the requirements of the ordinance as to year round dwellings outlined in first part of the opinion] clearly were incorporated to serve proper purposes well within the scope of the police power. It cannot be said that they do not reasonably serve such purposes."

It is not the universally recognized rule as the Michigan Court seems to assume that the presumption is in favor of the validity of a zoning ordinance and the acts of public officials thereunder. The Supreme Court of Ohio in State, etc. v. Joseph 139 Oh. St. 229, 39 N. E. (2nd) 515, 523, in an analogous case, states:

"In determining whether respondents' administrative acts and policies may be upheld, it should be observed that the usual presumption of the validity of the Acts of Public Boards and officials does not apply to acts involving the forfeiture of an individual's rights or the depriving him of the free use of his property. 22 Corpus Juric, 141; Deaver v. Napier 139 Minn. 219, 166 N. W. 187; Christ v. Fent 16 Okl. 375, 84 p. 1074. Applying this exception to a case like the one at bar, where public officials seek under a zoning ordinance to deny a landowner a particular use of his property, the highest court of Maryland has held that the board of zoning appeals has the burden of showing reasons sufficient to support its authority in refusing a building permit.

Applestein v. Mayor and City Council of Baltimore, 156 Md. 40, 47, 143 A. 666."

Even though it be true that the law presumes that an ordinance is valid yet it is only a presumption not a conclusive rule. The presumption can be rebutted by competent evidence.

Appellants in attacking the validity of the ordinance may have had the burden of proof but when competent evidence had been presented rebutting the presumption, then the Township had the burden of showing that facts exist to justify the application of the ordinance to Appellants.

Appellants by an overwhelming array of facts rebutted the presumption as to validity of the ordinance by showing its unreasonableness in its application to (a) the Camp Meeting use which is a lawful use and (b) the buildings erected or placed on the property being used only seasonally, should not be required to comply with requirements for dwellings for year round occupancy.

The Michigan Supreme Court completely ignores these facts and does not even assert that Appellants failed to produce facts which would rebut the presumption.

In this state of the case, the burden was shifted to the Township to show facts supporting the reasonableness of the ordinance. The Township wholly failed to produce any evidence that would support the validity of the ordinance by negating the facts produced by Appellants or by introducing new facts.

Appellants' evidence is undisputed and shows the ordinance to be invalid as an abridgement of religious freedom and an unreasonable deprivation of property

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contrary to Ammendments I and XIV of the United States Constitution insofar as it

(1) forbids the use of the property for a Camp Meeting, Bible School and Conference Ground for Appellant, Full Salvation Union;

(2) requires dwellings suitable for year round use when temporary dwellings are more reasonably suited for the particular use;

(3) requires removal of a partially constructed church building because the Township Board arbitrarily refused a building permit.

THIRD: The Camp Meeting, Bible School and Conference use and the temporary dwellings, being forbidden by the ordinance, are nuisances per se under the statute [Section 8 of Act 302 of the Public Acts of 1937 of Michigan] and subject to abatement by injunction.

The theory of statutory nuisance **per se** as applied by the Michigan Supreme Court contains 2 elements:

(A) The Camp Meeting use is a nuisance **per se.**

(B) Variations from the building requirements, make the temporary dwellings nuisances **per se.**

And both are held to be nuisances without further showing because the statute declares them to be such **per se.**

The decision is that: If a statute by definition declares a use or a thing a nuisance, it thereby is a nuisance, **irrespective of the factual situation.**

The decision goes further: A Camp Meeting use is not defined as a nuisance other than by implication, in that it is not expressly authorized as a use, and therefore by implication is forbidden, and as such is therefore a

nuisance **per se** and subject to abatement by injunction.

No court it is submitted has ever gone so far.

It has been the consistently recognized law under the 14th Amendment to the U. S. Constitution since and perhaps earlier than Lawton v. Steele 152 U. S. 133 (1894) that the legislature cannot by mere definition make something a nuisance irrespective of the factual situation.

In that case this Court declared (p. 137) "The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unnecessary and unusual restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

While the Michigan statute provides for abatement by injunction by a court, yet the Michigan Supreme Court's theory is that the legislative declaration makes unnecessary any inquiry by the court as to the facts of the situation.

A. A Camp Meeting use as a nuisance **per se.**

The cases cited by the Michigan Supreme Court as showing the authority of the legislature to declare nuisances **per se** include:

(1) A place for selling **intoxicating liquors** in express violation of the law, citing

Mugler vs. Kansas 123 U. S. 623.

Denapolis vs. U. S. 3 Fed. (2nd) 722.

State ex rel. Threlkeld vs. Osborne 207 Ia. 636, 223 N. W. 363.

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Stead vs. Fortner 225 Ill. 468, 99 N. E. 680.

(2) A place for **gambling** in express violation of law, citing

Pompano Horse Club vs. Florida 93 Fla. 415, 111 So. 801.

State ex rel. Hunter vs. The Araho 137 Neb. 389, 289 N. W. 545.

(3) A house of **ill fame,** citing

State vs. Ellis 201 Ala. 295, 78 So. 71.

(4) Operation of a **motion picture house on Sunday** in violation of law, citing

Farehand Sol. Gen'l. vs. Moody 200 Ga. 166, 36 S. E. (2nd) 321.

(5) **Collection of garbage** by persons not licensed in express violation of an ordinance, citing

City of Grand Rapids vs. Vink 184 Mich. 688, 151 N. W. 672.

It is urged that the Michigan Supreme Court has misconstrued ***Mugler vs. Kansas****, supra, in the light of* ***Lawton vs. Steele,*** *supra, as to the authority of the legislature to declare a nuisance per se.*

The above cited cases involve uses or practices recognized by law and community mores as nuisances and it is competent for the legislature by statute to declare them to be nuisances **per se** and authorize their abatement by injunction.

But a camp meeting use is obviously not comparable to any of these. A number of states including Michi-

gan have enacted statutes to specifically authorize camp meetings of which the following are illustrative:

Compiled Laws Michigan 1929, Sections 10327-10348.

Religious Corporations Law of New York, Sections 20, 21, 21a and 225-N (5).

Revised Stat. New Jersey 1937, Title 40, ch. 95 to 102.

Burns, Indiana Stat. Anno. 1933, ch. 23., Sec. 25-2301-7.

And many states have enacted statutes specifically to protect camp meetings, the following being illustrative:

General Laws Massachusetts 1932, ch. 272, Sec. 39, p. 3186.

General Statutes of Connecticut, Revision 1930, Sec. 3560-1.

Illinois Revised Stat. 1947, State Bar Assn. Ed., ch. 38, Sec. 176.

Purdons Penna. Stat. 1936, Tit. 15, Sec. 3241-47; Tit. 73, Sec. 131-133.

Not only is a camp meeting use lawful generally but Appellants' uncontradicted evidence shows the use to be reasonable and lawful under the 14th Amendment to the U. S. Constitution, in the place, in the spot, where carried on.

B. Building Requirements—violations as nuisances **per se.**

That violations of building requirements in an ordi-

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nance may be declared a nuisance **per se** and abated by injunction has been held in

People vs. Kelly 295 Mich. 632, 295 N. W. 341

and such violations may be abated by injunction when so authorized in the ordinance, tho not declared nuisances **per se**, has been held in

City of Detroit vs. Kunin 181 Mich. 604, 148 N. W. 207

and such violations, though not declared a nuisance **per se**, may yet be abated by injunction, has been held in

City of Stockton v. Frisbie and Latta 93 Calif. App. 277, 270 Pac. 270

as cited by the Michigan Supreme Court, but none of these cases is applicable to the Appellants' case.

In the above cases there is no problem as to the reasonableness of the building requirement in relation to the use involved. In Appellants' case the question is as to the reasonableness of the requirements as to inside plumbing, foundations, chimneys etc., for dwellings for year round use when applied to temporary dwellings for a two weeks' period in the summer.

The Township has insisted on the requirements for year round dwellings as to running water, inside plumbing, sewage facilities, foundations, etc., which are clearly unreasonable when applied to the habitations suitable and appropriate for the Camp Meeting use only in the summer season.

It is submitted that the Michigan Supreme Court is in error in holding that the habitations suitable and appropriate for the Camp Meeting use, to-wit: tents,

cabins, cottages, house trailers etc., are statutory nuisances **per se**, irrespective of the factual situation.

The rights of Appellants under the U. S. Constitution were raised in the answer of Appellants to the Bill of Complaint and were fully argued in briefs and oraly before the Circuit Court for Kalamazoo County, Michigan, and upon general appael to the Michigan Supreme Court were fully presented to the Michigan Supreme Court by the answer of Appellants and were fully argued in briefs and orally by counsel before that Court, as appears from the opinion of the Michigan Supreme Court which states:

"This brings us to a consideration of the principal question in the case, the validity of the zoning ordinance. Defendants claim that as construed by the township officials and by the trial court it is not a proper exercise of the police power of the State because 'unreasonable, arbitrary and discriminatory'. Defendants further assert, as appears from their answer, that said ordinance operates to deprive them of property without due process of law in violation of the Constitution of the United States, 14th Amend. Sec. 1, and the Michigan Constitution 1908, Art. 2, Sec. 16."

The unreasonable abridgement of Appellants' rights to freedom of religious worship under the U. S. Constitution was also raised by Appellants in their answer and is the primary question in this case and was fully argued in briefs and orally by counsel before the said Circuit Court and the Michigan Supreme Court, although not noted by the Michigan Supreme Court in its opinion.

Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States and Showing Federal Questions Involved On Appeal.

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ONE

The ordinance and the statute under which the ordinance was adopted and is enforced, as they have been construed and applied by the Court below, as absolutely-forbidding a Camp Meeting use by Appellants in Portage Township, Michigan, constitute an unreasonable abridgement of Appellants' rights to freedom of religious worship contrary to Amendments I and XIV of the U. S. Constitution.

Largent v. State of Texas 318 U. S. 418 (1943)

Cantwell v. Connecticut 310 U. S. 296 (1940)

Schneider v. State of New Jersey 308 U. S. 147 (1939).

Martin v. City of Struthers, Ohio 319 U. S. 141 (1943).

TWO

The ordinance and the statute under which the ordinance was adopted and is enforced, as they have been construed and applied by the Court below, as absolutely forbidding a Camp Meeting use by Full Salvation Union, Appellant herein, of its property in Portage Township, Michigan, is an arbitrary and unreasonable deprivation of property rights of said Appellant without due process of law contrary to Amendment XIV of the U. S. Constitution.

Nectow v. City of Cambridge 277 U. S. 183 (1928)

Seattle Trust Co. v. Roberge 278 U. S. 116 (1928)

and states courts have likewise so held in analogous cases:

State ex rel. Roman Catholic Bishop of Reno v. Hill City Engineer. 59 Nev. 231, 90 Pac. (2nd) 217 (1939)

State ex rel. Synod of Ohio of United Lutheran Church in America v. Joseph 139 Oh. St. 229, 39 N. E. (2nd) 515 (1942)

Ellsworth, Building Inspector v. Gercke 62 Ariz. 198, 156 Pac. (2nd) 242 (1945).

THREE

The ordinance and the statute under which the ordinance was adopted and is enforced, as they have been construed and applied by the Court below, as constituting the Camp Meeting use and temporary dwellings suitable and appropriate to such use, such as tents, cabins, cottages, housetrailers and automobile trailers, nuisances **per se** and subject to abatement by injunction irrespective of the factual situation, is an unreasonable abridgement of Appellants' rights to freedom of religious worship contrary to Amendments I and XIV of the U. S. Constitution.

Lovell v. City of Griffin 303 U. S. 444 (1938)

Near v. State of Minnesota ex. rel. Olson, Co. Atty. 283 U. S. 697, (1931).

Smith v. State of Texas 233 U. S. 630 (1914).

FOUR

The ordinance and the statute under which the ordinance was adopted and is enforced, as they have been construed and applied by the Court below, as constituting the Camp Meeting use and temporary dwellings suitable and appropriate to such use, such as tents, cabins, cottages, house trailers, and automobile trailers, nuisances **per se** and subject to abatement by injunction irrespective of the factual situation, is an unreasonable and arbitrary deprivation of property rights of Full Sal-

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vation Union, Appellant herein, contrary to Amendment XIV of the U. S. Constitution.

Lawton v. Steele 152 U. S. 133 (1894)

Smith v. State of Texas 233 U. S. 630 (1914)

FIVE

The ordinance and the statute under which the ordinance was adopted and is enforced, as they have been construed and applied by the Court below, are void upon their face because by their terms they are in excess of the police power of the state of Michigan and Township of Portage in that they constitute the church building partially erected by Full Salvation Union, Appellant herein, under an informal permit, a nuisance per se and subject to abatement by injunction, solely because a formal permit was subsequently refused by the Portage Township Board, whereby said Appellant is deprived of its property without due process of law and denied equal protection of the law, contrary to Amendment XIV of the U. S. Constitution.

Seattle Trust Co. v. Roberge 278 U. S. 116 (1928)

State ex rel. Synod of Ohio of United Lutheran Church in America v. Joseph 139 Oh. St. 229, 39 N. E. (2nd) 515 (1942).

SIX

The ordinance and the statute under which the ordinance was adopted and is enforced, as they have been construed and applied by the Court below, are void upon their face because by their terms they are in excess of the police power of the State of Michigan and the Township of Portage, in that they confer arbitrary and discriminatory powers upon the Portage Township Board and the Portage Township Supervisor to grant or

refuse building permits under the ordinance, whereby the Full Salvation Union, Appellant herein, has been deprived of its property without due process of law and denied the equal protection of the laws contrary to Amendment XIV of the U. S. Constitution.

Discussion

The celebrated case of Village of Euclid v. Ambler Realty Co. 272 U. S. 365 (1926) laid down the cardinal principle that zoning ordinances

> "must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities."

The Ohio Supreme Court gave careful consideration to that case in State ex rel. Synod of Ohio of United Lutheran Church of America v. Joseph, **supra,** and at p. 521 of 39 N. E. (2nd) stated:

> "It is true that the comprehensive zoning ordinance upheld in Village of Euclid v. Ambler Realty Co. . . ., which may be regarded as the cornerstone of the modern law of use zoning, did exclude churches from both single and two-family residential districts. The Supreme Court of the United States however, not only pointed out that it was simply validating the ordinance in its 'general scope' and not in detail, but, in addition, the court expressly re-

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moved from consideration that portion of the ordinance which restricted the use of property for church purposes saying at page 385 of 272 U. S. '. . . . There is nothing in the record to suggest that any damage results from the presence in the ordinance of those restrictions relating to ***churches***, schools, libraries, and other public and semi-public buildings . . . For present purposes the provisions of the ordinance in respect of these uses may therefore be put aside as unnecessary to be considered. (*italics* ours). The Village of Euclid case, while deciding that commercial and industrial structures may, consistently with the Fourteenth Amendment, be excluded from residential districts, decides nothing with regard to the exclusion of humanitarian, public and semi-public uses like churches, schools and libraries."

The case of Appellant's as shown by the facts in the Record seems clearly within the foregoing principles. The health, safety, morals and general welfare of the district where the property is located have been advanced by the use to which Appellants are putting the land. The 15 acres of wooded land used for the past 5 summers as a Camp Meeting ground had been lying idle. Thick underbrush covered the entire area, neighbors had used it as a dumping ground for tin cans and rubbish (Record, p. 66); farmers and others in the area, including one member of the Township Board, used it as a hunting ground (Record, p. 318). Appellants have spent time and money in clearing up the grounds and developing them for a permanent Camp Meeting and Conference Grounds. This land is ideal for a Camp Meeting Ground. To put it to such use advances public health, safety, morals and general welfare more than allowing it to revert to a hunting ground where the noise of guns and

barking of dogs may be heard in the hunting season instead of the sound of singing and praying for two weeks out of the year during the Camp Meeting.

The meetings of Full Salvation Union, Appellant herein, on its camp ground have been attended by a minimum of 50 or so persons and by a maximum of 500 or so persons, many of whom have not "camped" on the grounds. The maximum number of "campers" has not exceeded 300 persons.

Religious meetings such as are conducted on the Camp Ground are a blessing to any community and promote the public morals and welfare. Such noise as is made is not that of commercial or industrial enterprises, but such as is necessarily incident to the worship of Almighty God. It is impossible to pray and sing and preach the Gospel without making some noise. But the noise thus made cannot be said to compare unfavorably with that made at the carnivals, circuses and ball games every summer in the cities throughout the country. The testimony shows that the Camp Meetings are conducted in an orderly fashion and that the services each night are usually over by 11:00 p. m. (Record, p. 309).

The Township's own witness testified that only four dwellings had been erected in the vicinity during the past seventeen years (Record, p. 116). At that rate it will take over 500 years to fill up the vacant lots around and near West Lake, to say nothing of the hundreds of acres of farming and vacant land surrounding Appellant's land.

The uncontradicted evidence is that no traffic or safety hazard has existed at any time in the area. The health officer of the Michigan State Department of Health for the City and County of Kalamazoo testified

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that he had inspected the camp ground and found all requirements of the State Health Department fully satisfied and recommended only the use of covered garbage cans which has been followed (Record p. 25-34; Exhibit 1, p. 325). He also testified that the water supply after analysis "shows no contamination and since the location and construction were satisfactory this department would consider the supply satisfactory for drinking and domestic use." Record, 26, and Exhibit 2, p. 327.

Such Camp Meeting use in the locale where conducted clearly is not unlawful under Amendment XIV of the U. S. Constitution even though not authorized by the Portage Township Zoning Ordinance.

The main building called the "tabernacle" where the religious services are held is not located on a city lot in a congested residential area, but in a tract of 15 acres of woods, not subdivided, and around this central meeting place the tents, cabins and cottages were and are to be located. Central modern water and toilet facilities, complying with all requirements of the State Department of Health, are provided as is done in many tourist camps scattered throughout the country (Record, p. 28). It is unreasonable of the Township Board to demand that each individual cottage or cabin have running water and inside toilets.—This is not required of tourist camps, even when located in cities.

To maintain that the same requirements as to foundations and chimneys apply to the cabins on the Camp Ground as apply to year round dwellings located on platted lots is unreasonable. No such requirement is ever made concerning tourist cabins located in tourist camps scattered over the country and often located in large cities.

To absolutely prohibit the use of tents for overnight sleeping purposes in a fifteen acre tract of woods and in connection with Appellant's camp meeting use, is unreasonable. To demand that each cabin or cottage have inside toilet, running water, and 400 square feet of floor space is unreasonable when it is intended that it be used only as sleeping quarters during the camp meeting and when central modern toilets and running water facilities are provided for such cabins. The ordinance provides that house trailers may be used for fourteen days by any one family when located on premises having running water and sewage facilities (Ordinance, Sec. 13). These house trailers are not required to have inside toilets and running water or 400 square feet of floor space or foundations and chimneys in order to be used as **temporary dwellings.** It is unreasonable to permit the use of house trailers and prohibit an analogous use of cabins since there could be no difference as used on Appellant's camp ground in their relation to health, safety, morals or general welfare.

A central dining hall is provided on the grounds and makes the use of cooking facilities in the individual cabins unnecessary. For Full Salvation Union to feed and accommodate the people who attend the Camp Meeting at or below cost greatly enhances the adequacy of the cabins and cottages as temporary dwellings.

Nuisances per se are not made such by fiat under Amendment XIV of the U. S. Constitution, but by facts. Neither the Camp Meeting use nor the temporary dwellings used in connection therewith by the facts can be said to be nuisances, even though not authorized by the Portage Township Zoning Ordinance.

Sec. 13 of the ordinance provides: "Tents, house

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trailers and/or automobile trailers shall not be used for dwelling purposes within the township limits, provided, however, that house trailers or automobile trailers may be used for temporary dwelling for a total period of not more than 14 days in any one year by any one family when located upon premises having running water and sewage facilities ...."

This absolute prohibition of the use of tents, making no distinction between use for temporary and permanent dwelling purposes is arbitrary, capricious and unreasonable when applied to Full Salvation Union's (Appellant herein) camp meeting use of its camp ground.

The refusal of the Township Board and the Courts below to recognize the applicability of the provision in said Sec. 13 of the ordinance permitting use of "house trailers or automobile trailers. . .for temporary dwelling for a total period of not more than 14 days in any one year by any one family when located upon premises having running water and sewage facilities" to the camp meeting use of said Appellant's camp meeting ground was arbitrary, capricious and unreasonable and deprived said Appellant of its property without due process of law and denies said Appellant equal protection of the law contrary to Amendment XIV of the U. S. Constitution.

The refusal of the Township Board to issue a building permit for the construction of the church building on the property of Full Salvation Union and the enjoining by the Courts below of the construction of such church solely because such permit was not issued and ordering its removal, was arbitrary, capricious and unreasonable.

Such assertions of authority abridge the freedom of

religious worship of Appellants and deprive Full Salvation Union of its property without due process of law and deny said Appellant equal protection of the law, contrary to Amendments I and XIV of the U. S. Constitution.

Each and every assignment of error contained in the Petition for Appeal filed in this cause is here incorporated by reference to show that substantial federal questions are raised.

The opinion of the Circuit Court judge (Appendix C hereto) should not be permitted to prejudice the case of Appellants. It must be noted that the Michigan Supreme Court wholly ignored it and apparently placed no reliance upon it whatever. Not one citation of authority for applicable legal principle or precedent is made and not one particular factual reference is made to the evidence. The opinion does not appear to be based on facts but upon supposition and imagination.

The record shows that not more than four or five hundred persons have attended the Camp Meeting at any one time (Record, p. 192, 206). Sanitation and water supply were found satisfactory by Michigan Department of Health (Record, p. 25-34) and facilities were being provided as rapidly as they could be acquired under war time conditions and as they were needed.

Like any other religious enterprise, it would be natural to hope for increase in numbers but there was no evidence that there would be any unprecidented growth beyond the ability to provide facilities.

There was no evidence of any traffic congestion or hazard whatever. Testimony of a disinterested witness denied any traffic problem (Record, p. 175). No prop-

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erty owner testified that the Camp Meeting use was detrimental to the value of his property.

The opinion refers to a "restaurant and retail store" as a purpose of Appellants. The only evidence for this reference is the endeavor of Appellants to provide meals or provisions for those who attended the Camp Meeting and Conference for the period of two weeks or so at a price without profit. The ordinary church supper is aimed to secure more than cost; here no profit was made, merely a service rendered.

The opinion attacks the character of Marion and James Andrews. There is nothing to warrant such attack. Counsel for the Township spent much time and effort in attempting to find some fault with the Church organization and made insinuations concerning the leaders of the Church but failed to produce any evidence of fault.

The opinion overlooks the facts and accuses Appellants of insidious dealings with and machinations against the Township Board. The record shows that before purchasing the land in question, representatives of Full Salvation Union consulted with the legal representative of the Township Board and explained in detail the use to which the land was to be put. (Record p. 151). Marion Andrews applied for and was given permits for construction of the tabernacle and the caretaker's cottage and the Township Supervisor exempted the tract of woods from taxes (Record, p. 47-49, 152). The Supervisor testified that he inspected the premises in 1942 and watched the development of the Camp Grounds from the start (Record, p. 120). Not until after Appellants had held two Camp Meetings did the Township Board make any complaint and that was only about the cabins or cottages erected or placed on the grounds by individ-

ual members without permits. (Record, p. 226-7).

As soon as Appellants were notified that permits were required for these structures they sought to obtain such permits (Record, p. 230). They were refused (Record, p. 233). Long and patient effort was made to make satisfactory arrangements with the Township Board. James Andrews visited various members of the Board in their homes (Record, p. 237-239) and his efforts were successful to the point that the Board agreed to recognize the cabins or cottages as "accessory buildings" to the tabernacle and authorized the Board's Attorney to work out a permit satisfactory to the Board and Appellants (Record, p. 304-305). At a later meeting such permits were refused (Record, p. 305). Representatives of Full Salvation Union met with the Board again and again and submitted plans for the development of the Camp Ground (Record, p. 66-67). Such a course of conduct disproves the assertion that "There has been at no time a good faith effort on their part to comply with the ordinance." On the contrary it shows that Appellants have been frank, open and aboveboard in their dealings with the Township Board in an effort to preserve and maintain their Constitutional rights to religious freedom and the reasonable use of property in its exercise.

Wherefore, the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the court, because the court below disposed of important and substantial federal questions in a way that is in conflict with applicable decisions of this Court, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to

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call for this Court's power of supervision and review to halt the same.

Respectfully submitted,

Full Salvation Union
By J. F. ANDREWS
J. F. Andrews, General Pastor
and principal executive officer.

J. F. ANDREWS
J. F. Andrews
Petitioners—Appellants

Address of Appellants:
114 W. Clay St.,
Kalamazoo 14, Mich.

APPENDIX A

OPINION OF THE MICHIGAN SUREME COURT

PORTAGE TOWNSHIP

vs.

FULL SALVATION UNION et. al.

Before The Entire Bench.

CARR, C. J.

Plaintiff in this case brought suit for injunction on June 22, 1944, seeking to restrain the use of certain premises in violation of the township zoning ordinance. The defendant Full Salvation Union, an ecclesiastical corporation formed under the laws of the State of Michigan, is the owner of the premises in queston, and defendant Andrews is in charge thereof as the agent of the corporate defendant. Defendants, by answer to the bill of complaint, raised issues involving the interpretation of the ordinance, its validity as construed by the officers of the township, the right of the plaintiff to seek equitable relief, and other matters not of controlling importance. Following trial in circuit court, a decree was entered for plaintiff in accordance with the prayer of the bill of complaint, and defendants have appealed.

The ordinance in question went into effect on January 16, 1942. It was adopted pursuant to the provisions of Act No. 302, Pub. Acts 1937, as amended by Act No. 69, Pub. Acts 1939 (Comp. Laws Supp. 1940, Sec. 2651-11 et seq. [Stat. Ann. 1942 Cum Supp. Sec.

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5.2962 (1)-5.2962 (12)]). Said act was repealed by Act No. 184, Pub. Acts 1943 (Comp. Laws Supp. 1945, Sec. 2651-71 et seq. [Stat. Ann. 1946 Cum Supp. Secs. 5.2963 (1) - 5.2963 (31)]). By specific provision of section 26 of the repealing act, however, ordinances previously adopted by townships under the act of 1937 remained in full force and effect subject to the adoption of a new ordinance relating to the subject matter.

The general purpose of the act under which plaintiff's zoning ordinance was adopted was indicated by the title which read as follows:

> "An act to provide for the establishment in certain organized townships of districts or zones lying wholly outside of the corporate limits of cities and villages, within which districts or zones the use of land, natural resources and structures, the height, the area, the size and location of buildings may be regulated by ordinance, and within which districts regulations may be established for the light, ventilation, sanitation and protection of such buildings, and within which districts the density of population may be regulated by ordinance; to provide for the administering of this act, and for a planning board; to provide penalties for violation; to provide against conflict with State housing code or other acts, ordinances or regulations; to provide for the collection of building permit fees in benefited districts and of taxes therefor; to provide for petition, public hearing and a referendum by the electors."

The ordinance in question divides the township into five so-called "use districts," designated as "A" residence district; "B" residence district; "C" local business district; "D" commercial and industrial district; "E"

industrial district. The premises involved in the instant case are located wholly in districts "A" and "B". The ordinance permits buildings in district "A" for private and two-family dwellings, churches, public schools, libraries, and accessory buildings incident to any one of the authorized uses. In district "B" the same uses are expressly authorized as for district "A" and in addition thereto farming and truck gardening, multiple dwellings, hotels, private clubs, fraternities and lodges, boarding houses, hospitals, educational, philanthropic and eleemosynary institutions, nurseries and greenhouses, buildings and uses accessory to those expressly enumerated when located on the same lot and not involving the conduct of a retail business, public garages for storage purposes only, and golf courses. The requirements imposed with reference to light, ventilation, sanitation and protection specify that every dwelling shall have windows so located as to properly light and ventilate all portions of the rooms. Outside toilets are forbidden except for temporary use during construction work on the premises, and each dwelling is required to be provided with "running water, adequate inside water closet accomodations, and sewage facilities." The ordinance further directs that each dwelling shall be placed upon a substantial foundation of mortar and stone, brick, concrete or other like material, with joists not less than one foot off the ground. The use of tents, house trailers and automobile trailers for dwelling purposes is forbidden, subject to the provision that a trailer may be used for a total period of not more than 14 days in any one year by a single family, when such trailer is located upon premises having running water and sewage facilities.

The ordinance further makes provision for building permits, for fees therefor, and for enforcement of its provisions by the supervisor of the township. A board

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of appeals is created to function in accordance with the provisions of the enabling act. A penalty by way of fine is provided for any violation of the ordinance, with authority in the court imposing the fine to require imprisonment in the county jail until the same is paid, not exceeding 30 days.

The defendant Full Salvation Union acquired title to a part of the premises in question in November, 1942, pursuant to a land contract executed in May, preceding. The balance of the land was purchased in June, 1943. The tract owned by the defendant is approximately 16-1/2 acres in extent. Following the execution of the land contract in May, 1942, the defendant corporation applied for and obtained a building permit for the construction of a tabernacle for religious purposes. A permit was also obtained for a caretaker's residence. These buildings were completed in the summer of 1942 and thereafter a camp meeting was held on the premises for a period of about two weeks. A number of small buildings were erected on the grounds, to be used as temporary dwellings by members of the Full Salvation Union during the meetings. Other small buildings were brought on the premises for the same purpose, and tents and house trailers were also used. During the camp meeting period the corporate defendant provided persons attending with meals. It is claimed that this service was rendered at cost and not for the purpose of making any financial profit. No building permits were obtained for any of the smaller residences. In the summer of 1943 a camp meeting was conducted on the premises for a somewhat longer period than that held during the preceding year. The buildings and tents in question were used for residential purposes and it appears that such use was continued in one or more instances following the termination of the camp meeting. As above noted,

the suit for injunctive relief was instituted in June, 1944.

The trial court, after listening to the proofs of the parties, concluded that the defendants had deliberately and persistently violated the township ordinance and had by their acts created a nuisance. Injunctive relief to prevent further violations and a continuation of the nuisance found to exist was granted and defendants were further ordered to remove within 30 days all structures erected in violation of the terms of the ordinance.

It is the claim of the defendants on appeal that the use made of the premises as established by the proofs was not in violation of the terms of the ordinance. Such contention, however, is not tenable. The small buildings, referred to in the record as shacks, constructed on the property or brought there for residential purposes, clearly did not comply with the requirements of the ordinance with reference to construction, sanitation, and required facilities. Such structures cannot be regarded as accessory to any other building lawfully erected on the premises. Obviously, their purpose was to facilitate the carrying on of the camp meeting. The same conclusion follows with reference to the tents which defendants permitted to be erected on the premises and which the record indicates members of the Full Salvation Union were invited to bring with them to the camp meeting. It is obvious also that the camp meeting itself was an unauthorized use of the premises on which it was conducted. In effect, defendants contend that because such meeting was held for religious purposes it should be placed in the same category as churches which, as above noted, the ordinance expressly authorizes. However, the conclusion does not follow that every place in which religious services are conducted is a church. Starks v. Presque Isle Circuit Judge, 173 Mich. 464. Webster's New International Dictionary (2d Ed.), defines a church as "A building set

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apart for public worship, esp. Christian worship." The term was clearly used in the ordinance before us with such meaning in mind. The term "camp meeting" implies a religious gathering for the purpose of conducting a series of religious services, usually in the open air or in a tent, lasting for several days, during which persons attending live in tents or temporary houses. Johnson v. Jones, 86 Vt. 167 (83 Atl. 1085); Commonwealth v. Bearse, 132 Mass. 542 (42 Am. Rep. 450). The term necessarily implies that part or all of those attending the meeting shall "camp," in the ordinary meaning of that word. Defendants' meetings were conducted in this manner, many of those attending using the small buildings or shacks referred to, and tents, for residential purposes.

The record before us indicates rather clearly that the camp meetings conducted by defendants were attended with such degree of noise as to cause disturbance to others residing in the vicinity. There is testimony to the effect that such noise continued from early in the morning until approximately 4:00 a. m. the following day. It cannot be said that such use was within the contemplation of the ordinance.

This brings us to a consideration of the principal question in the case, the validity of the zoning ordinance. Defendants claim that as construed by the township officials and by the trial court it is not a proper exercise of the police power of the State because "unreasonable, arbitrary and discriminatory." Defendants further assert, as appears from their answer, that said ordinance operates to deprive them of property without due process of law in violation of the Constitution of the United States (14th Am., 1) and the Michigan Constitution (1908), art. 2, 16. That the ordinance must stand the test of

reasonableness is not disputed. However, the presumption is in favor of validity. Courts may not properly invalidate a statute or ordinance unless the constitutional objections urged against it are supported by competent evidence or appear on the face of the measure in question. In Harrigan and Reid Co. v. Burton, 224 Mich. 564, it was said (p. 569):

> "The generally accepted rule is that a presumption prevails in favor of the reasonableness and validity in all particulars of a municipal ordinance unless the contrary is shown by competent evidence, or appears on the face of the enactment."

See, also, City of East Lansing v. Smith, 227 Mich. 495.

In Austin v. Older, 283 Mich. 667, the general rule was stated as follows (p. 674).

> "It is elementary that every intendment is in favor of the constitutionality of an ordinance and plaintiff has the burden of showing that it has no real or substantial relation to public health, morals, safety or general welfare. Zoning ordinances are constitutional in principle as a valid exercise of the police power."

Of like import is Moreland v. Armstrong, 297 Mich. 32.

Defendants cite and rely on Senefsky v. City of Huntington Woods, 307 Mich. 728. There the plaintiff instituted mandamus proceedings to compel the defendant city to issue a building permit which had been refused because the contemplated residence contained less than the usable floor space specified by the city zoning ordinance. It was held by this Court that the requirement,

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as applied to plaintiff's property, was unreasonable under the particular facts involved because having no tendency to advance or protect the public health, morals, safety or general welfare. A somewhat similar situation was presented in Frischkorn Construction Co. v. Redford Township Building Inspector, 315 Mich. 556. The facts in the case at bar, however, serve to differentiate it from the cases cited. The provisions of plaintiff's zoning ordinance, involved in this case, cannot be said to be unrelated to the public health and welfare. The requirements as to water, light and sanitation, above noted, clearly were incorporated to serve proper purposes well within the scope of the police power. It cannot be said that they do not reasonably serve such purposes. Neither does it appear that the restrictions as to the use of premises located in districts "A" and "B" are not reasonably within the scope of the authority vested in the township under the act of the legislature. Applying the general principle suggested by the decisions above cited, we find that the provisions of the ordinance in question, to which defendants object, are valid.

Defendants further claim that equity is without jurisdiction to grant the relief sought by plaintiff because the ordinance contains no provision expressly authorizing, seeking, or issuing, an injunction against violations of the ordinance. Attention is directed to Township of Warren v. Raymond, 291 Mich. 426. There the plaintiff sought to enjoin the defendant from operating a junk yard without complying with the requirements of a township ordinance entitled:

> "An ordinance to license and regulate junk dealers and junk yards and the collection and depositing of junk in the township of Warren."

Said ordinance contained no provision for its enforce-

ment by injunction. This court recognized the general rule that equity has not the power to restrain violations of criminal statutes or ordinances unless the specific facts involved form a basis for equitable relief. Attention was called to the fact that the wrecking of automobiles is not a public or private nuisance per se, and further that the pleadings did not allege a public nuisance calling for injunctive relief. A decree of the trial court granting the relief sought by plaintiff was accordingly reversed and the bill of complaint dismissed.

In the case at bar, however, the statute pursuant to which plaintiff's ordinance was adopted specifically declared in section 8 thereof, that:

> "Buildings erected, altered, razed or converted, or uses carried on in violation of any provision of township ordinances or regulations made under the authority of this act are hereby declared to be a nuisance per se. The court shall order such nuisance abated and the owner and/or agent in charge of such building or land shall be adjudged guilty of maintaining a nuisance per se."

It thus appears that under the specific terms of the statute the use made by defendants of the premises in question, and the buildings erected, in violation of the terms of the ordinance, constitute a nuisance per se.

Such result was recognized by this Court in People v. Kelly, 295 Mich. 632. An analogous provision of the prohibitory liquor law of Kansas was before the Supreme Court of the Unite States in Mugler v. Kansas, 123 U. S. 623. In discussing the effect of such provision, which in terms declared all places where intoxicating liquors were manufactured, sold, bartered or given away in violation of the provisions of the statute to be

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common nuisances, the court said (pp. 673, 674):

"The statute leaves the court at liberty to give effect to the principle that an injunction will not be granted to restrain a nuisance, except upon clear and satisfactory evidence that one exists. Here the fact to be ascertained was, not whether a place, kept and maintained for purposes forbidden by the statute, was, **per se**, a nuisance—that fact being conclusively determined by the statute itself—but whether the place in question was so kept and maintained.

"If the proof upon that point is not full or sufficient, the court can refuse an injunction, or postpone action until the State first obtains the verdict of a jury in her favor. In this case, it cannot be denied that the defendants kept and maintained a place that is within the statutory definition of a common nuisance."

See, also, Denapolis et al. v. The United States, 3 Fed. (2d) 722; Pompano Horse Club et al. v. State of Florida, 93 Fla. 415; State, ex rel. Threlkeld, County Attorney, v. Osborne, 207 Iowa 636 (223 N. W. 363); Forehand, Solicitor General, v. Moody, 200 Ga. 166 (36 S. E. (2d) 321); State, ex rel. Hunter, Attorney General, v. The Araho et al., 137 Neb. 389 (289 N. W. 545).

It is specifically provided by 3 Comp. Laws 1929, Sec. 13944, as amended by Act No. 41, Pub. Acts 1939 (Comp. Laws Supp. 1940, Sec. 13944 [Stat. Ann. 1946 Cum Supp. Sec. 27.545], that the circuit court in chancery shall have jurisdiction:

"In all matters concerning nuisances and waste,

where there is not a plain, adequate and complete remedy at law, and may grant injunctions to stay and prevent such nuisances and waste."

Plaintiff relies on this provision of the statute, claiming that it, in view of the declaration of the legislature in the enabling act under which the township ordinance was adopted to the effect that uses and structures maintained in violation of such ordinance shall be regarded as nuisances per se, gives to the courts of equity complete jurisdiction in the premises. It must be said in this connection that there is no adequate remedy at law for the enforcement of such an ordinance. Citing 2 Story's Eq., Secs. 921, 922, it was said in Mugler v. Kansas, supra. (p. 673):

"The ground of this jurisdiction in cases of purpresture, as well as of public nuisances, is the ability of courts of equity to give a more speedy, effectual, and permanent remedy, than can be had at law. They can not only prevent nuisances that are threatened, and before irreparable mischief ensues, but arrest or abate those in progress, and, by perpetual injunction, protect the public against them in the future; whereas courts of law can only reach existing nuisances, leaving future acts to be the subject of new prosecutions or proceedings. This is a salutary jurisdiction, especially where a nuisance affects the health, morals, or safety of the community. Though not frequently exercised, the power undoubtedly exists in courts of equity thus to protect the public against injury."

The jurisdiction of equity to restrain a nuisance was upheld by this Court in Board of Health of the City of

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Grand Rapids v. Vink, 184 Mich. 688. In that case the plaintiff sought equitable relief to restrain defendant from removing and depositing garbage within the city. The Court pointed out that the averments of fact in the bill of complaint were sufficient on which to predicate a finding that a nuisance was alleged, although the term was not used. The proofs were sufficient to establish such nuisance. It is recognized that usually courts of equity will not interfere to prevent the breach of a penal ordinance, but may properly do so under certain circumstances to prevent the continuance of a nuisance. See, also, Building Commission of the City of Detroit v. Kunin, 181 Mich. 604; Stead v. Fortner, 255 Ill. 468; City of Stockton v. Frisbie and Latta, 93 Cal. App. 277; State v. Ellis, 201 Ala. 295 (78 So. 71). Further citations will be found in the annotation in 129 A. L. R. 890 et seq.

Other questions raised by counsel for defendants in their brief, and on the oral argument, do not require discussion. They have been given consideration and found to be without substantial merit. For the reasons above indicated the decree of the trial court is affirmed with costs to plaintiff.

APPENDIX B

DECREE OF CIRCUIT COURT, KALAMAZOO COUNTY, MICHIGAN

PORTAGE TOWNSHIP

vs.

FULL SALVATION UNION et. al.

At a session of said Court held in the County Building, in the City of Kalamazoo, Michigan, on the 14th day of March A. D. 1945.

Present:

Honorable George V. Weimer,
Circuit Judge

This cause having come on to be heard upon pleadings and proofs taken in open Court and after hearing the arguments of counsel for the respective parties and the Court being fully advised in the premises, and it appearing to the Court from the said pleadings and proofs that the material allegations in the bill of complaint in this cause are true, and that said defendants have erected, maintained and used tents, cabins and/or other structures for camping and/or temporary dwelling purposes, and have suffered and permitted the use of premises controlled by them located in Portage Township, Kalamazoo County, Michigan, for camping and temporary dwelling purposes and in other manners in violation of the terms and provisions of the duly adopted Portage Township Zoning Ordinance, and have used and are threatening to continue to use said premises as a camp

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meeting ground, to which defendants intend to attract several thousand people for an indefinite period, during which they will use tents, auto trailers and non-conforming cabins for housing purposes together with the retail of foods and provisions, with the reasonable certainty that proper sanitary facilities will be impossible, or at least will not be provided, and that traffic congestion in and about the small area occupied by the camp meeting ground will be definitely hazardous as well as a pronounced nuisance to the permanent property owners in the immediate neighborhood; further that said defendants acquired the property in question for a very definite purpose, namely a camp meeting ground, with the main building or buildings and various and sundry small buildings, tents, auto house cars, comfort stations, restaurant and retail store, after the same was subject to the regulations and restrictions of the duly adopted Portage Township Zoning Ordinance; that said property was close to a long established residence district on the north shore of West Lake; further, that said defendants, by their operations on the premises and their use thereof, have grossly violated the provisions of said ordinance, the rights of property owners in the township generally, and particularly the rights of surrounding property owners, and have created a nuisance both public and private; further appearing to the satisfaction of this Court that said defendants have created and intend to continue and increase an intolerable situation, amounting to a nuisance, in close proximity, practically adjacent to the long established, desirable residence district along the north side of West Lake and because thereof said plaintiff is entitled to the relief prayed for.

It is, therefore, ordered, adjudged and decreed that said defendants and both of them are hereby enjoined

and restrained from using or suffering or permitting to be used the premises owned and controlled by them located in Portage Township, Kalamazoo County, Mich., and more particularly described in the bill of complaint on file in this cause as a camp meeting ground or in violation of any of the terms or provisions of the Portage Township Zoning Ordinance or in any manner amounting to a nuisance, either public or private.

Further ordered that said defendants and both of them are hereby enjoined and restrained from erecting, maintaining or using or suffering or permitting the use thereof of any tents, cabins, and/or other structures for camping and/or temporary dwelling purposes, or in any other manner whatsoever in violation of the terms and provisions of the Portage Township Zoning Ordinance.

Further ordered, adjudged and decreed that all structures heretofore erected on said premises without building permits or certificates of compliance as required by the provisions of the said Portage Township Zoning Ordinance, are hereby declared by this Court to be nuisances per se, and said defendants shall forthwith remove all such structures within thirty days, and in default thereof said plaintiff, by or through its agents, shall have the right to enter upon said premises and demolish or remove the same and any expense thereby incurred shall become and be a lien against said premises until paid.

Further ordered, adjudged and decreed that in the event that removal of such structures shall be made by terms of this decree and default being made in the payment of any expenses thereby incurred for a period of thirty days after such removal, any materials thereby removed from said premises may be sold at public

auction by the plaintiff and the proceeds thereof applied against the expenses incurred by such removal and the costs taxed in this suit, and the balance, if any, paid to said defendant, Full Salvation Union.

George V. Weimer
Circuit Judge

APPENDIX C

OPINION OF CIRCUIT COURT KALAMAZOO COUNTY, MICHIGAN

PORTAGE TOWNSHIP
vs.
FULL SALVATION UNION et. al.

Plaintiff seeks restraint of alleged violations and intended violations of a zoning ordinance and abatement of a nuisance allegedly involved therein.

Under the pleadings the ordinance was concededly duly adopted. Defendants claim the ordinance is unreasonable, arbitrary, confiscatory and, therefore, invalid; that they have substantially complied with its provisions, and that this Court of Equity is without jurisdiction.

Upon this record, which speaks for itself and need not be reviewed, the ordinance is not unreasonable in its application to the property involved. The ordinance does not unreasonably prohibit an enterprise, project or undertaking, such as the camp meeting ground, to which Defendants intend to attract several thousand people for an indefinite period, during which they will use tents, auto trailers, and non-conforming cabins for housing purposes, together with the retail of foods and provisions, with the reasonable certainty that proper sanitary facilities will be impossible, or at least will not be provided, and that traffic congestion in and about the small area occupied by the camp meeting ground will be definitely hazardous as well as a pronounced nuisance to the permanent property owners in the immediate neighborhood.

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The allegations in the Bill of Complaint are amply sustained, not only by the testimony of Plaintiff's witnesses, but as well also by that of all the defense witnesses, including especially Marion Andrews and James Andrews. These two men are highly intelligent, educated, artful, evasive and plausible. Having seen and heard them, it is not difficult to visualize their attitude, manner and machinations in their various contacts and dealings with the several officers, agents and employes of Portage Township. The representatives of the township apparently placed confidence in Marion Andrews, and James Andrews and their father, now deceased, and the representations made by them from time to time, and made every reasonable effort to cooperate with them. Both Marion and James Andrews constantly sought to and did circumvent and overreach the representatives of the Township and the efforts of the latter to compel compliance with the ordinance.

Defendants acquired the property in question for a very definite purpose, namely, a camp meeting ground, with a main building or buildings, and various and sundry small buildings, tents, auto house cars, comfort stations, restaurant and retail store.

This property is close to a long established desirable residence district on the north side of West Lake and was subject to the regulations and restrictions of the duly adopted zoning ordinance when purchased by defendants. Defendants either did not know or did not care about the regulations and restrictions of the zoning ordinance. From the beginning they have engaged in a continuous, studied undertaking to evade and circumvent the plain and reasonable terms of the ordinance and the regulations there-under. Their assurances of an intention to do otherwise have been insincere and mere

pretense. There has been at no time a good faith effort on their part to comply with the ordinance. Their entire obvious program and procedure have been and are insiduous. The word "insiduous" is used advisedly. By their operations on the premises and their use thereof Defendants have grossly violated the provisions of the ordinance, the rights of property owners in the township generally, and particularly the rights of surrounding property owners, and have created a nuisance both public and private. It is clear that they propose and intend to continue and increase such use of the premises. Coupled with their religious activities, admittedly they intend to serve as many as five thousand people commercially for an indefinite period during the summer months on the comparatively small piece of land in question.

Defendants have created and intend to continue and increase an intolerable situation amounting to a nuisance in close proximity, practically adjacent to the long established desirable residence district in which some homes are occupied during the summer months and others throughout the year.

The rights of the property owners of Portage Township may not be impaired through the credulity of the officers, agents or employees of the township in their dealings with Defendants. Neither may Defendants, through and by means of their devious, dubious and deceitful practices, acquire rights respecting the use of their property in contravention of the ordinance worthy of protection or respect.

Plaintiff may have Decree.

GEORGE V. WEIMER
Circuit Judge of the County
of Kalamazoo, Mich.

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APPENDIX D

PORTAGE TOWNSHIP ZONING ORDINANCE

An ordinance regulating, restricting and districting the location of residences, trades, industries, businesses and the location of buildings and accommodations designed for specific uses; regulating and limiting the height and bulk of buildings hereafter erected or altered; regulating and determining the area of yards, courts and other open spaces surrounding buildings; regulating and limiting the density of population; establishing regulations for the light, ventilation, sanitation and protection of such buildings; and for said purposes dividing the township into districts and establishing the boundaries of said districts; providing for building permits and supervising officers and prescribing penalties for the violation of its provisions, as amended.

Section 1. Definitions:

Accessory Building, Class "B" Residence District: A subordinate building or portion of main building, the use of which is incidental to that of the main building; also any farming stables, barns or other buildings located upon lands being used for farming and truck gardening and for the purpose of carrying on such business upon the premises.

Dwelling, Private: a building occupied by but one (1) family alone.

Dwelling, Two Family: a building occupied by but two (2) families alone.

Dwelling, Multiple: a building or portion thereof oc-

cupied otherwise than as a private or two-family dwelling.

.....

Section 2. Use District Regulations:

In order to regulate and restrict the location of trades and industries and the location of buildings erected or altered for specific uses, the Township of Portage shall be divided into "Use Districts," of which there shall be five, known as:

"A" Residence District
"B" Residence District
"C" Local Business District
"D" Commercial and Industrial District
"E" Industrial District

The Township of Portage shall be divided into five Use Districts and the boundaries of such districts shall be as herein described and as such are shown upon the map attached hereto and made a part of this ordinance, such map being designated as the "Use District Map of the Township of Portage, Kalamazoo County, Michigan, 1942," showing districts for use regulations and the said map and all notations, references and other things shown thereon shall be a part of this ordinance with such effect as herein set forth.

Except as herein provided, no building shall be erected or altered, nor shall any building or premises be used for any purposes other than is permitted in the Use District in which such building or premises is located.

Section 3. "A" Residence District.

In the "A" Residence District no building or

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premises shall be used and no building shall be hereafter erected or altered, unless otherwise provided in this ordinance, except for one or more of the following uses:

1. Private and two family dwellings
2. Churches
3. Public Schools
4. Libraries
5. Accessory buildings and uses incident to any of the above uses when located on the same lot and not involving the conduct of a retail business, including one private garage when not located less than sixty (60) feet from the front lot line or in a fireproof compartment as a part of the main building, and including also home occupations engaged in by the occupants of a dwelling not involving the conduct of a retail business on the premises, and including also the office of a physician, surgeon, dentist, musician, artist, or similar vocations, when situated in the same dwelling used by such physician, surgeon, dentist, musician, artist, or similar vocations, as his or her private dwelling provided no name plate exceeding three (3) square feet in area containing the name and occupation of the occupant of the premises, nor a sign exceeding eight (8) square feet in area pertaining to the lease, hire or sale of a building or premises shall be permitted in any "A" Residential District.

Section 4. "B" Residence District.

In the "B" Residence District no building or premises shall be used and no building shall be hereafter erected or altered, unless provided in this ordinance, except for one or more of the following uses:

1. Any use permitted in the "A" Residence District.

2. Farming and truck gardening, together with the right to sell on the premises at wholesale or retail any goods or products produced upon the said premises; including the right to erect any necessary farming stables or barns or other buildings or outbuildings for the shelter of any number of animals incident to the carrying on of the pursuit of farming or truck gardening upon the premises, and including the incidental right to board and/or keep horses for hire.

3. Multiple Dwellings.

4. Hotels.

5. Private clubs, fraternities, lodges, excepting those the chief activity of which is a service customarily carried on as a business.

6. Boarding Houses.

7. Hospitals.

8. Institutions of an educational, philanthropic or eleemosynary nature, not including penal or correctional institutions.

9. Nursery and greenhouses.

10. Accessory buildings and uses customarily incident to any of the above uses when located on the same lot and not involving the conduct of a retail business, except as set forth in No. 2 of this section.

11. Public garages for storage purposes only . . .

12. Golf courses, consisting of not less than nine hole standard size courses, and excluding so-called midget, pitch or putt courses, together with the right to sell on the premises soft drinks and goods inci-

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dental to the carrying on of the business of a golf course.

Sections 5, 6 and 7 relate to other use districts. (omitted).

Section 8 Non-conforming Uses.

(Permits continuance of nonconforming uses at the time of adoption of ordinance with certain limitations.)

Section 9. Setback and Side Line Spacing. (omitted).

Section 10. Area Requirements.

The building width of houses and other structures in "A" Residence Districts and "B" Residence Districts shall be as limited by other sections of this ordinance. Every dwelling hereafter erected shall contain not less than 400 square feet of first floor space.

Section 11. Use District Boundaries.

. . . . . .

The Use Districts defined by this ordinance shall be and are established as follows:

"UNPLATTED LAND"

. . . . .

Section 23, Town 3 South, Range 11, West:

"B" Residence District: All of section 23 except that part herein described as "C" Local Business District.

(Land of Full Salvation Union is in Section 23, a part of the "B" Residence District.)

. . . . . .

Section 12. Light, Ventilation, Sanitation and Protection Requirements.

1. (omitted.)

2. Every dwelling hereafter erected shall be provided with running water, adequate inside water closet accommodations, and sewage facilities.

3, 4 and 5, (omitted).

6. Every dwelling hereafter erected shall be placed upon a substantial foundation of mortar and stone, brick, concrete or other similar or like materials; all joists shall be not less than one foot off the ground; all exterior walls shall be finished with butt wood siding, wood shingles, asbestos-cement shingles or siding, stucco on metal lath, masonry veneer or other similar standard siding materials. No roll roofing material shall be used for exterior siding purposes; all wood exterior finish shall be painted or similarly protected; all roofs shall be finished with asphalt, asbestos, or wood shingles, or other standard roofing material or materials of a permanent nature and construction; no tar paper or other similar materials shall be used as a permanent exterior roofing; all chimneys shall be of approved masonry or reenforced concrete and shall extend at least two and one-half feet above the highest point of the roof of the building on which they are constructed and shall be wholly supported on a substantial ground foundation.

7. (omittted).

Section 13. Tents and Automobile Trailers; other Unlawful Uses.

Tents, house trailers and/or automobile trailers shall not be used for dwelling purposes within the

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township limits, provided, however, that house trailers or automobile trailers may be used for temporary dwelling for a total period of not more than 14 days in any one year by any one family when located upon premises having running water and sewage facilities, and provided further that automobile trailers and house trailers may be occupied for dwelling purposes within duly licensed house trailer camps and subject to the requirements thereupon imposed.

The keeping of pigs or hogs is prohibited in properties platted for residential purposes within the use district boundaries.

Section 14. Enforcement.

It shall be the duty of the Supervisor of Portage Township to enforce the provisions of this ordinance.

Section 15. Building Permits.

No premises shall be occupied or used, and no building shall be erected, and no building now or hereafter erected shall be altered or shall be changed in use, until a certificate of compliance shall have been issued by the inspector duly appointed by the Portage Township Board, stating that the building according to the plans for its erection or alteration complies with the building and health laws and ordinances and with the provisions of these requirements.

Section 16. Board of Appeals.

The Township Board shall act as a Board of Appeals upon all questions arising under this ordinance and in accordance with the provisions of Act No. 302 of the Public Acts of the State of Michigan for 1937, as amended.

Section 17. Violation, Penalty (omitted).

Section 18. Validity (omitted).

Section 19. Effective Date of Ordinance.

This ordinance shall take effect on January 16th, 1942.

Section 20. Conflicting Provisions Repealed (omitted).